

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 16 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
ALLTEL Communications, Inc., Dobson Cellular)	
Systems, Inc. and American Cellular Corporation)	DA 02-2285
Petitions for Reconsideration)	
of Commission Orders on)	
E911 Phase II Waiver Requests)	

To: The Commission

**COMMENTS OF RURAL CELLULAR ASSOCIATION ON
PETITIONS FOR RECONSIDERATION**

The Rural Cellular Association ("RCA"),¹ hereby responds to the Commission's invitation to comment² on petitions filed by ALLTEL Communications, Inc., Dobson Cellular Systems, Inc. and American Cellular Corporation (hereafter, jointly referred to as "the Petitioners") for reconsideration of the Commission's Order staying the enhanced

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing rural wireless service providers.

² *Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Regarding Order to Stay E911 Phase II Rules for Small Carriers: Public Notice*, DA 02-2285 (rel. Sept. 16, 2002) (requesting comment on ALLTEL Communications, Inc. Petition for Reconsideration, CC Docket No. 94-102 (filed Aug. 26, 2002) ("ALLTEL's Petition") and Dobson Cellular Systems, Inc. and American Cellular Corporation Joint Petition for Reconsideration, CC Docket No. 94-102 (filed Aug. 26, 2002) ("Joint Petition")).

No. of Copies rec'd 0 + 4
10/16/02

911 (“E911”) Phase II deployment deadlines for non-nationwide wireless carriers.³ The Petitioners object to the Order on the basis that it imposes a “strict liability” standard for compliance with the deployment schedules, without regard to the availability of E-911 equipment. This approach is irrational, and deviates from Commission precedent. Because the “strict liability” provision in the Order pertains to both mid-sized and small carriers, RCA members are directly affected by the Commission’s determination. As small carriers, RCA members have far less ability than even the mid-sized Petitioners to affect the availability of suitable equipment or cost support for E-911 implementation. Accordingly, RCA joins Petitioners in urging reconsideration of the “strict liability” standard.

I. Imposition of the “Strict Liability” Standard to E911 Deployment Deadlines is Irrational, and Inconsistent with Commission Precedent

RCA has previously demonstrated, in the context of E911 deployment schedules for nationwide carriers, that carriers should not be held liable for noncompliance with E911 deployment timetables where E911 compliant equipment is unavailable.⁴ By imposing the “strict liability” standard to E911 compliance deadlines, the Commission

³ See *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers: Order to Stay*, CC Docket No. 94-102, FCC 02-210 (rel. July 26, 2002) (“Order”).

⁴ See Comments of RCA on Petitions for Reconsideration in CC Docket No. 94-102, filed December 19, 2001 at 3-5 (“RCA Tier I Comments”) (supporting petitions for reconsideration filed by Cingular Wireless, LLC, Nextel Communications, Inc. and Nextel Partners and Verizon Wireless of FCC Orders granting the nationwide carriers’ E911 deployment plans, with conditions).

impermissibly prejudged future waiver requests which may seek further temporary extension of deadlines based on the unavailability of E911-compatible equipment.⁵

In the instant proceeding, the Commission also impermissibly prejudices future waiver requests by holding mid-sized and small carriers “strictly liable” for failure to have E911 Phase II service available by the extended deadlines. The Commission ruled that if any carrier does not have Phase II-compliant service available by the extended deadlines, “it will be deemed noncompliant and referred to the Commission’s Enforcement Bureau for possible action.”⁶ The Commission stated that proof that the carrier is not at fault for noncompliance “will not excuse noncompliance” but may be considered as “possible mitigation factors” in an enforcement context if it is accompanied by the carriers “concrete and timely actions.”⁷

As demonstrated by the Petitioners, this predetermination of noncompliance is contrary to previous decisions in which the Commission has granted relief when carriers were unable to meet deadlines due to unavailability of equipment from vendors or failure of technological solutions.⁸ One petitioner notes:

[i]n this very proceeding, the Commission recently granted waivers to carriers extending the deadline by which carriers’ digital networks must be TTY-compatible because ‘[the carriers’] requests for limited waivers based on vendor delays are well-supported by the evidence[,]’ and ‘requiring compliance with the

⁵ *Id.* at 3.

⁶ Order at para. 37.

⁷ *Id.*

⁸ See ALLTEL’s petition at 5; Joint Petition at 6.

[initial deadline] would be unduly burdensome and in many instances not feasible, *despite the best efforts of the carriers.*'⁹

Further, a “strict liability” standard is irrational where compliance may be impossible. Carriers can only deploy E911 technology that manufacturers make available to them. As illustrated by a recent report of a nationwide carrier, despite diligent efforts made by carriers, vendors may be unable to meet Commission standards thereby forcing carriers to switch vendors or technologies, further delaying implementation of E911 services.¹⁰ In such instances, reasoned decision-making demands that the “strict liability” standard be abandoned in favor of an appropriate and rational administrative response.¹¹

II. Imposition of the “Strict Liability” Standard on Small Carriers is Particularly Burdensome

Imposition of the “strict liability” standard will unfairly penalize small carriers, the last to receive E911 Phase II-compliant equipment. In this proceeding, RCA has demonstrated that because small, rural carriers lack a large subscriber base or financial

⁹ Joint Petition at 6-7 (quoting *Revision of the Commission's Rules to Ensure Compatibility with the Enhanced 911 Emergency Calling Systems: Order*, CC Docket No. 94-102, DA 02-1549 paras. 17-18 (rel. June 28, 2002) (“*TTY Waiver Order*”) (emphasis added)).

¹⁰ See Cingular Wireless LLC Supplement to Third Quarterly E911 Implementation Report and Petition for Reconsideration in CC Docket No. 94-102, filed Oct. 1, 2002 at 2 (Cingular noting that it has suspended shipments of E-OTD infrastructure equipment, a hybrid solution for its GSM network, and has scheduled a field trial of TruePosition's network-based E911 solution due to the “continued uncertainties regarding the ability of E-OTD to satisfy the Commission's October 1, 2003 deadline for 50m/150m accuracy”); Joint Petition at 7 (noting that in the *TTY Wavier Order*, “the Commission recognized that technological problems may appear ‘late in the implementation process’ and ‘only reveal[] themselves in the late stages of testing and implementation’”).

¹¹ See RCA Tier I Comments at 4 (citing Commissioner Abernathy as stating “[i]t is a mistake to equate manufacturer conduct with carrier conduct and to punish one for the acts and omissions of the other”).

clout, they have even less ability than larger carriers to affect the availability of suitable equipment or cost support for E-911 implementation.¹² In its Order, the Commission agreed with RCA's assessment and found that even the mid-sized "Tier II" carriers "have greater resources and can obtain location technologies in a shorter time frame than the very small carriers."¹³ The Commission noted that "[a]ll non-nationwide carriers are not similarly situated when it comes to E911 Phase II compliance" and that the record clearly shows that "size matters when it comes to negotiations with location technology, switch, and handset vendors for the technology necessary to comply with E911 Phase II."¹⁴

In recognition of these findings, the Commission delayed the deadlines for the small and rural "Tier III" carriers six months longer than the mid-sized "Tier II" carriers. The final deadline of December 31, 2005, however, remains the same. This means that some Tier III carriers implementing a handset-based solution have little more than two years to migrate their entire subscriber base to Phase II-capable handsets or be found "strictly liable."¹⁵ The Commission previously has found that a replacement program of

¹² *Id.* at 2. RCA noted "[b]ecause their niche markets are not as lucrative for manufacturers, small rural carriers cannot bring the same pressure to bear on manufacturers as larger carriers." *Id.* at 3.

¹³ Order at para. 19. This finding serves as the basis of the Commission's determination to divide non-nationwide carriers into two groups, mid-size (Tier II) and small (Tier III) carriers. *Id.*

¹⁴ Order at para. 20.

¹⁵ *See* Order at para. 37. Although certain E911 Phase II-capable phones will be manufactured before the September 1, 2003 deadline, the phones may not be available to smaller carriers before or even after this date. *See* Order at para. 12 (noting that although manufacturers may begin producing E911 Phase II-capable handsets, they typically do not begin selling the phones to carriers who purchase in small quantities until after larger carriers' orders have been satisfied).

three years and ten months was “aggressive” for carriers and that any “crash” replacement program would be extremely expensive, disruptive and have little public safety benefits.¹⁶ The Commission also found that “some subscribers may simply choose to kept their non-ALI handsets” rather than convert to phones that have E911 capabilities.¹⁷ This is likely to be the case in many rural markets where the older three-watt analog phones provide service superior to the lower watt handheld phones. To hold small and rural carriers “strictly liable” for converting less than 95 percent of their subscriber base by December 31, 2005 may unfairly penalize a smaller carrier with distinct market or subscriber conditions. Accordingly, the Commission should not apply the “strictly liable” standard to small and rural carriers, but be ready to consider specific facts and circumstances which may justify alternative approaches.

¹⁶ See *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Third Report and Order*, 14 FCC Rcd 17388, 17407 & 17413 (1999).

¹⁷ *Id.* at 17413.

III. Conclusion

RCA commends the Commission for recognizing the distinct circumstances facing small and rural wireless carriers in implementing E911 requirements. Nevertheless, fine-tuning is necessary to remove the inappropriate "strict liability" standard. Imposition of the standard is contrary to Commission precedent, irrational and especially burdensome when applied to small and rural carriers. Accordingly, the Commission should grant the Petitioners' request.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

By: 

Sylvia Lesse
John Kuykendall

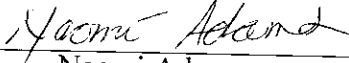
Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037
(202) 296-8890

October 16, 2002

CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Cellular Association" in CC Docket No. 94-102 was served on this 16th day of October 2002, via hand delivery or first class, U.S. Mail, postage prepaid to the following parties:


Naomi Adams

Chairman Michael Powell*
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Commissioner Michael J. Copps*
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Commissioner Kathleen Abernathy*
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Commissioner Kevin Martin*
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Barry Ohlson, Chief*
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jennifer Tomchin
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C400
Washington, DC 20554

Glenn S. Rabin
Vice President
Federal Regulatory Affairs
ALLTEL Communications, Inc.
601 Pennsylvania Ave., N.W.
Suite 720
Washington, D.C. 20004

Ronald L. Ripley, Esq.
Senior Corporate Counsel
Dobson Cellular Systems, Inc.
American Cellular Corporation
14201 Wireless Way
Oklahoma City, Oklahoma 73134

Qualex International*
445 12th Street, SW
Room CY-B402
Washington, DC 20554

* via hand delivery